

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24

PUERTO RICO TOWING AND BARGE CO.¹

Employer

and

24-RD-473
24-RD-474

ANGEL LOZADA OSORIO, An
Individual

Petitioner

AMERICAN MARITIME OFFICERS

Union

DECISION AND DIRECTION OF ELECTION

Upon the filing of petitions under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding², the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The Employer's name appears as amended at the hearing.

² The record reflects that the Union did not appear at the hearing. Further, that although the Seafarers International Union, AFL-CIO notified the Region that it sought to intervene in these proceedings and was notified of the filing of these petitions and of the hearing, it did not appear at the same. The Hearing Officer noted for the record that Seafarers International Union, AFL-CIO had advised the Region that it did not now seek to represent these employees and that it would not seek to intervene in this proceeding.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization involved claims to represent certain employees of the Employer.⁴

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Unit A: Captains, supervisory engineers and mates employed by the Employer at its place of business in San Juan, Puerto Rico excluding all other employees, including motormen, deckhands, guards, and supervisors as defined in the Act.

There are now approximately 12 employees in Unit A.

Unit B: All motormen and deckhand employees employed by the Employer at its place of business in San Juan, Puerto Rico excluding all other employees, including captains, supervisory engineers, mates, guards and supervisors as defined by the Act.

There are now approximately 7 employees in Unit B.

³ Puerto Rico Towing and Barge, Co. provides towing services to tugboats and barges in San Juan, Puerto Rico. During the past twelve months, a period representative of its operations generally, it received gross revenues from its operations in excess of \$50,000 and provided services to customers located outside Puerto Rico valued in excess of \$50,000.

⁴ The record reflects that bargaining units A and B are covered under the terms of two collective bargaining agreements that expire on November 2, 2002. Joel Koslen, the Employer's Vice-President, testified that he had no knowledge regarding the parties' prior collective bargaining history or whether or not grievances had been filed on behalf of any employees. Nevertheless each contract recognizes the Union as the exclusive collective bargaining representative of the aforementioned unit employees, contains a union security clause as well as a grievance arbitration procedure, dues checkoff and initiation fees and other provisions regarding wages, medical plan, sick leave, Christmas bonus and holidays. In these circumstances, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act. Mac Towing, Inc., 262 NLRB 1331 (1982).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.⁵ Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by American Maritime Officers.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **North Macon Health Care Facility**, 315 NLRB 359 (1994); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, La Torre de Plaza Suite 1002, 525 F.D. Roosevelt Ave., San Juan, Puerto Rico 00918-1002, on or before **October 2, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

⁵ As provided for in Section 103.20 of the Board's Rules and Regulations, the Employer is required to post copies of the Board's Official Notice of Election in conspicuous places at least 3 full working days (excluding the day of the election, Saturdays, Sundays, and holidays) prior to the date of the election; said notices are to remain posted until the end of the election. Failure to post the election notices as required by the Board's Rules and Regulations shall be grounds for setting aside the election whenever proper and timely objections are filed. An employer shall be conclusively deemed to have received copies of the election notices unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of said notices.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. This request must be received by the Board in Washington by **October 9, 2002**.⁶



Dated September 25 2002

at San Juan, Puerto Rico

Marta M. Figueroa
Regional Director, Region 24
National Labor Relations Board

300-339-2500-0000

⁶ In accordance with section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.